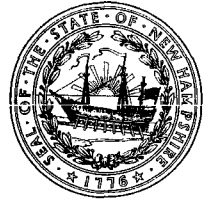




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Mrs. Margaret & Mr. Edward Brummer
76 Fitzgerald Road
Rindge, NH 03461

Re: Unregistered Dam off Old Cathedral
Road in Rindge New Hampshire

ADMINISTRATIVE ORDER
No. WD 05-20

June 22, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Mrs. Margaret & Mr. Edward Brummer pursuant to RSA 482:5, RSA 482:12 and RSA 482:87. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Mrs. Margaret & Mr. Edward Brummer are individuals having a mailing address of 76 Fitzgerald Road, Rindge, New Hampshire 03461

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482, DES regulates the construction and maintenance of dams so as to meet the stated statutory objectives, including the regulation of water levels, the lessening of flood damage, and the enhancement of public safety. Pursuant to RSA 482:87, the Commissioner of DES has adopted New Hampshire Admin. Rules Env-Wr 100-700 to implement this program.
2. RSA 482:5 requires the owner of a non-permitted existing dam to submit an application for a permit for said dam to DES.
3. RAS 482:11-a requires the owner of a dam to maintain and repair the dam so that it does not become in disrepair.
4. Mrs. & Mr. Brummer are owners of a dam ("Dam") located off Old Cathedral Road in Rindge, New Hampshire further identified on property map 7, lot 20-1 on plan entitled "MINOR SUBDIVISION LOCATED ON FITZGERALD ROAD AND OLD CATHEDRAL ROAD RINDGE, N.H." by Vorce, Soney and Associates, Land Surveyors, dated January 15, 1999.

5. RSA 482:12 requires DES to periodically inspect all dams in the state which may pose a menace to public safety, and to take action to ensure that the dam is repaired or reconstructed if the inspection indicates that the public safety so requires.
6. RSA 482:2, V defines a "dam in disrepair" as a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or is incapable of maintaining a reasonably constant level of waters impounded or which does not contain adequate gates and sluiceways to provide for the holding or controlled discharge of waters impounded.
7. Env-Wr 101.21 defines "menace to public safety" as any dam whose failure would threaten life or property. Property, when used in this context, means buildings, structures or other real estate.
8. Env-Wr 101.03 (b) defines "Class AA Structure" as a dam with no hazard potential, the failure of which would not threaten life or property.
9. Env-Wr 101.04 (a) defines "Class A Structure" as a dam with a low hazard potential, the failure of which would not result in possible loss of life as defined by Env-Wr 101.29, would result in minimal economic loss and would result in major damage to a town or city road.
10. The Dam, if it were to fail, at a minimum, is a threat to a town road (Old Cathedral Road) immediately downstream. Major damage would occur to Old Cathedral Road as the road acts as the impounding structure.
11. Env-Wr 101.29 defines "Possible Loss of Life" as the risk posed by water levels rising to the foundation but below the first floor elevation of a habitable structure during a dam breach.
12. In accordance with Env-Wr 301.03, and because the Dam does not meet the criteria of Env-Wr 101.03 (b), DES has classified the Dam as a Class A, low-hazard potential structure.
13. On June 16 2003, DES received a letter from Mr. Barry J. Lyons having an address of 28 Old Cathedral Road, Rindge, New Hampshire in regards the Dam on Old Cathedral Road in Rindge, impounding water on his property. Mr. Lyons was unclear who owned the structure. In a subsequent inspection by DES on July 15, 2003, it was determined that the structure in question did constitute a dam in the State of New Hampshire. At the time of the initial inspection, no owner was determined. The matter was referred to the land agent for DES to determine the ownership of the property. Mrs. and Mr. Brummer have since claimed ownership of the Dam, however they have not produced evidence supporting the right to flow neighboring properties. The following deficiencies noted at the Dam at this time include:
 - a. The concrete associated with the stoplog section is deteriorated with large sections spalling off.
 - b. There are trees growing within 10 feet of the outlet structure.
 - c. There is no operation and maintenance plan associated with the Dam.
14. In a letter dated December 26, 1973, to the Water Resources Board, Mr. Arthur Erdman and Mrs. Evelyn A. Erdman, previous owners of Mr. Barry J. Lyons property, indicate that the Dam on Old Cathedral Road in Rindge is backing water onto their property. It appears that an old bedspring and other debris blocking the existing culvert are responsible for the high water on

their property. The Erdmans also indicate that the owner of the current Brummer property at that time was a Mr. Bateman.

15. In a follow-up letter dated February 6, 1974, in response to the December 26, 1973 letter from Mr. & Mrs. Erdman, Donald M. Rapoza, Water Resources Engineer for the Water Resources Board, requested additional information regarding the location of the Dam and address of Mr. Bateman (previous owner to the Brummers property). The Water Resources Board was concerned with the construction of dams without a permit as indicated in the letter. No further correspondence was noted between the Erdmans and the Water Resources Board.

16. In a letter dated December 22, 2004 to David E. DuVernay, Code Enforcement Officer for the town of Rindge, as a follow-up to a letter Mr. DuVernay wrote to Barry J. Lyons, DES recommended that the boards retaining water at the Dam be removed. DES also recommended that the boards should remain out until such time as someone comes forward with documentation proving ownership of the Dam, as well as associated water rights supporting the ability to raise and lower the water level.

17. On a site visit/inspection and meeting with Mr. & Mrs. Edward Brummer on January 11, 2005, Mrs. Brummer claimed that they were the owners of the Dam as it was located on their property. In a follow-up letter from DES dated January 11, 2005, the Brummers were encouraged to conduct a thorough deed research to determine if they also owned associated water rights or could negotiate to acquire them. The Brummers were given until April 1, 2005 to conduct their research and inform DES of their results.

18. On February 2, 2005, DES received an application to register an existing dam from Margaret S. Brummer and Edward C. Brummer. Attached with the application was a tax map indicating property bounds and what appeared to be the approximate location of the pond associated with the Dam. No information was supplied indicating water rights.

19. DES responded to the Brummers in a letter dated March 2, 2005 stating that DES could not register the Dam without evidence supporting water rights. The Brummers were again encouraged to conduct a deed research or acquire water rights by April 1, 2005.

D. DETERMINATION OF VIOLATIONS

1. Margaret & Edward Brummer have violated RSA 482:11-a by failing to maintain the Dam to prevent it from becoming a "dam in disrepair".
2. Margaret & Edward Brummer have violated RSA 482:5 by failing to permit an existing dam.
3. Margaret & Edward Brummer have violated RSA 482:9 by constructing or reconstructing a dam without applying for a permit for said construction.

E. ORDER

Based on the above findings, DES hereby orders Margaret & Edward Brummer as follows:

1. **By July 1, 2005**, register the existing dam as required by RSA 482:5 with all appropriate information associated with the application including but not limited to rights for flowing the adjacent properties. Submit a plan for monitoring the Dam on a frequent basis and during storm events. The plan, when approved by DES, will remain in place until compliance with items E.2 and E.3 (Dam reconstruction) **OR** E.4 through E.5 (Dam removal) of this Order have been achieved.

If the Owner elects to repair the Dam pursuant to Item E.1, then the Owner must address Item E.2 through E.3, below:

2. **By September 1, 2005**, repair the spalling/deteriorating concrete associated with the stoplog section.
3. **By September 1, 2005**, remove the trees within 10 feet of the outlet structure of the Dam.

If the Owner elects to remove the Dam pursuant to Item E.1, then the Owner must address Item E.4 and E.5, below:

4. **By July 1, 2005**, remove all wooden stoplogs from the outlet structure.
5. **By August 1, 2005**, remove the remaining concrete associated with the stoplogs.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dale F. Guinn, P.E., Dam Safety Engineer
DES Water Division
29 Hazen Drive
Concord, NH 03301
Fax: (603) 271-7894
E-mail: dguinn@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-Wc 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve the dam owners or the respondents of the obligation to comply with the Order.

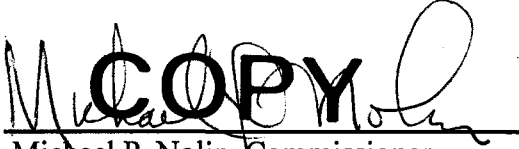
G. OTHER PROVISIONS

Please note that RSA 482:89 provides for administrative fines, civil and criminal penalties for the violations noted in this Order. DES will continue to monitor the dam owners' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.


COPY

Harry T. Stewart, P.E., Director
Water Division


COPY

Michael P. Nolin, Commissioner

Certified Mail/RRR: 7000 1670 0000 0588 6257

CC: Gretchen Rule, DES Legal Unit ✓
Public Information Officer, DES PIP Office
NH AGO
Town Board of Selectman
Rindge Fire Department
Mr. Barry Lyons
Atty. Backus
Jed Brummer